



Barrier Crimes

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Overview



- Study Authorization
- Kinship Care
- Barrier Crimes Statutes
- Policy Issues
- Discussion

Study Authorization



- In 2010, the Virginia Commission on Youth (COY) completed a study on barriers to kinship care in Virginia.
- At the conclusion of the study, COY requested the Crime Commission to evaluate the barrier crimes statutes, with an emphasis on Va. Code § 63.2-1719—the statute that pertains to foster care placements.

Kinship Care



- Under Virginia law, anyone who has ever been convicted of any of the crimes listed under Va. Code § 63.2-1719 cannot be a foster parent.
- There are no “look back” provisions or exceptions provided.
- According to COY’s study, Virginia’s barrier crimes statute for foster care is the most restrictive in the country.
 - The statute also applies to any adults residing in the home.

Kinship Care



- Va. Code § 63.2-1719 lists the following crimes (abbreviated list):
 - murder and manslaughter
 - abduction (but not abduction for human trafficking purposes)
 - assaults and bodily injuries
 - robbery and carjacking
 - communicated threats and felony stalking
 - any sexual assault
 - any arson (including misdemeanor arson offenses)

Kinship Care



- Va. Code § 63.2-1719 lists the following crimes (abbreviated list, continued):
 - drive by shootings, use of a machine gun or sawed-off shotgun in a crime of violence
 - pandering
 - offenses against children (indecent liberties, abuse and neglect, child pornography)
 - abuse and neglect of an incapacitated adult
 - escape from a jail
 - delivery of drugs to prisoners

Kinship Care



- Va. Code § 63.2-1719 also lists the following crimes, in the case of child welfare agencies and foster and adoptive homes:
 - any burglary offense;
 - any felony drug offense; and,
 - any felony conviction, not otherwise listed, within the past five years.
- Also includes, for child welfare agencies and foster and adoptive homes:
 - any founded complaint of child abuse; and,
 - any juvenile adjudication of delinquency for any of the listed felony offenses.

Kinship Care



- As a result of Virginia's strict barrier crimes law, each year there are relatives of foster children who are unable to serve as a "kinship foster parent," even when such a placement would otherwise be preferable for the child.
- According to the Va. Department of Social Services there were:
 - 80 individuals in FY10 and FY11 who were barred from providing kinship care because of a criminal conviction.

Kinship Care



- By comparison, in FY10, 656 relatives of foster children were deemed to be eligible; in FY11, 778 relatives were deemed to be eligible.
- In FY10, 297 children were placed in kinship care.
 - 3,493 children were placed in non-relative foster homes.
- In FY11, 294 children were placed in kinship care.
 - 3,345 children were placed in non-relative foster homes.

Source: *Va. Department of Social Services*

Kinship Care



- A possibility would be to create a statutory exception for kinship care individuals.
 - If a certain period of time had elapsed since a felony conviction for drug possession, or a misdemeanor not involving assault or a crime against a child, a person would not be barred from providing a kinship care placement.
- However, federal law does not permit states to create separate standards for foster care homes and kinship care homes.
 - Under 42 U.S.C. § 671 (a)(10) [the Social Security Act], if separate standards are allowed, the state is subject to losing federal funding.

Kinship Care



- Therefore, Virginia could modify the foster care statute, Va. Code § 63.2-901.1, so that a felony drug possession charge, or certain misdemeanor charges, would not be a barrier for anyone to serve as a foster parent, if sufficient time had passed from the time of conviction.
- Another possibility is suggested by 42 U.S.C. § 671 (a)(10), which allows states to create waivers for standards in kinship care placements, provided that such waivers are made on a case-by-case basis.
 - Non-relative applicants to be a foster parent would still be barred if they had been convicted of a barrier crime.

Barrier Crimes Statutes



- Virginia's barrier crimes statutes are lengthy and difficult to read.
 - They refer to all crimes in a given Chapter or Article, instead of listing out individual statutes.
- Senate Bill 1243 (Edwards 2011), would have re-written the barrier crimes statutes, including Va. Code § 63.2-1719, listing out the specific barrier offenses.

Barrier Crimes Statutes



- Writing the statute in this manner makes it much easier to tell which crimes are barriers to serving as a foster parent or in certain occupations.
- However, if the General Assembly ever creates a new criminal statute in Title 18.2, they would need to evaluate whether the new crime should serve as a barrier.
 - Currently, new criminal statutes automatically serve as barriers, if they are in a listed Chapter or Article.

Policy Issues



- Should Virginia expand the eligibility for certain persons, convicted of felony drug possession, or certain misdemeanors, if a certain number of years (5, 10, 15, or 20 years) have elapsed since the conviction?
- If an exception to the barrier crimes statute is enacted, should it apply to all foster care placements, or only kinship care placements?



- Should Virginia's barrier crimes statutes be re-written, so that individual crimes are listed, instead of simply referring to all crimes in a given Chapter or Article?



Discussion